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RECENT CASES

HOMICIDE—TRIAL—INSTRUCTIONS—EVERSOLE *v.* COMMONWEALTH, 163 S. W., 496.—In the prosecution of a wife for the killing of her husband, it was *held*, that it was error to refuse an instruction that if the husband ordered her to leave the house, and threatened to kill her if she didn't, and on her refusal assaulted her—the wife had a right to use all necessary force to resist, even to the point of killing the husband.

To justify a killing on the ground of self-defense the defendant must have had ground to believe himself in great peril, that the killing was necessary for escape, and there were no other safe means of retreat. *People v. Mallon*, 116 N. Y. App., 425. But in some of the southern states the doctrine prevails that a man need not retreat if he is where he has a right to be, even though the retreat could be safely made. *Brinkley v. State*, 89 Ala., 34. But to the general rule as to the necessity of retreat there is an universal exception that one attacked in his own house, and who is in the right, need not retreat but may resist even to the point of killing his assailant. *State v. Bissonnette*, 83 Ct., 261; *Andrews v. State*, 159 Ala., 115; *Jones v. State*, 76 Ala., 8. But the defendant must himself have been without fault. *State v. Touri* 101 Minn., 370. The theory is that when a man is in his own house he is deemed to have retreated to the wall and need not retreat further. *Palmer v. State*, 9 Wyo., 40. A man being in his own house need not fly as far as he can, as in other cases of *se defendendo*, for he hath the protection of his house to excuse him from flying. 1 Hale, P. C., 486. In the case of the husband and wife, the husband's home is the wife's home and she needn't retreat therefrom to avoid a difficulty even with her husband. *Hutchison v. State*, 165 Ala., 16. A person in his own house has the same right to stand his ground and kill in self defense when assaulted by a partner or co-tenant. *Jones v. State*, 76 Ala., 8. The principal case is in accord with the great weight of authority in making, under these circumstances, an exception to the rule that there is a duty to retreat.

INFANTS—CONTRACT TO PURCHASE LAND—RESCISSION.—HEALY *v.* KELLOG, 145 N. Y. S., 943.—An infant entered into a contract to purchase land on installments. After reaching his majority the infant, not wishing to perform, offered to return the contract, and demanded back the money already paid. The defendant refused to release the infant and threatened to send her to jail if she failed to perform. The infant thereupon made several payments when, learning of her rights, refused to carry out the contract. *Held*, notice of her disaffirmance together with her offer to return the contract amounted to a disaffirmance, though in ignorance of her rights, and under duress, she made several payments after reaching her majority, believing she was still bound by her contract.

In contracts relating to realty, the earlier cases held that the act of rescission on the part of an infant must be one of the same solemnity and